

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Complaint of

HARVEY SLOANE

Against Station WTVQ-TV
Lexington, Kentucky

ORDER

Adopted: March 16, 1994;

Released: March 18, 1994

By the Chief, Mass Media Bureau:

1. The Mass Media Bureau has before it a complaint filed February 4, 1993, on behalf of Dr. Harvey Sloane, and an answer filed March 4, 1993, by Shamrock Broadcasting, Inc. ("Shamrock"), former licensee of television Station WTVQ-TV, Lexington, Kentucky.¹ Dr. Sloane alleges that the station overcharged him during the 1990 elections in violation of the lowest unit charge ("LUC") requirement of Section 315(b) of the Communications Act of 1934, as amended.² Dr. Sloane was a legally qualified candidate for nomination and election for United States Senator for the Commonwealth of Kentucky for the May 29, 1990, primary and the November 6, 1990, general elections. Applying the guidelines set forth in *Lowest Unit Charge Requirements*, 6 FCC Rcd 7511 (1991), *recon. denied*, 7 FCC Rcd 4123 (1992) ("Declaratory Ruling"), to the information presented, we find that Dr. Sloane's complaint is untimely and should be dismissed.

2. To establish a *prima facie* case, a complainant must, at a minimum, submit "a short, plain statement of the claim sufficient to show that the complainant is entitled to the relief requested." *Declaratory Ruling*, 6 FCC Rcd at 7513. However, the *Declaratory Ruling*, 6 FCC Rcd at 7521 n.46, also stated that Section 315(b) complaints should be filed with the Commission in a timely manner.

3. Dr. Sloane first questioned Shamrock about possible overcharges during the 1990 primary and general elections by letter dated March 28, 1991, when Shamrock was still licensee of Station WTVQ-TV. Shamrock reviewed its records and determined that Dr. Sloane was entitled to a

refund of \$450, which it sent to Dr. Sloane by letter dated May 20, 1991. Shamrock heard nothing further from Dr. Sloane. On November 18, 1991, Shamrock and Park filed an application to assign the license of Station WTVQ-TV to Park. Public notice of the Commission's action granting Shamrock/Park application was given on December 18, 1991. Dr. Sloane filed nothing. On March 31, 1992, Park filed an application to renew its license for Station WTVQ-TV. Public notice of the Commission's acceptance of that application was given on April 9, 1992. Again, Dr. Sloane filed nothing. Indeed, after having received Shamrock's response in May 1991, there is no indication that Dr. Sloane took any further action until the filing of his complaint in 1993. Thus, Dr. Sloane gave Shamrock no notice that it should retain information regarding its political sales practices at Station WTVQ-TV. In addition, Dr. Sloane has made no showing which suggests that he could not have filed his complaint within the two-year period that licensees are required to retain political files³ or that he delayed filing his complaint because he had sought but failed to reach a negotiated settlement with the licensee. Given these circumstances, particularly the sale of the station, we see no reason to address the merits of Dr. Sloane's complaint or have Shamrock search through records it was no longer required or could reasonably have been expected to retain.

4. ACCORDINGLY, we find that Dr. Sloane has filed an untimely Section 315(b) complaint. Therefore, the complaint against Shamrock, former licensee of Station WTVQ-TV, Lexington, Kentucky, is hereby DISMISSED.

5. IT IS FURTHER ORDERED, that the complaint against Park, licensee of Station WTVQ-TV, Lexington, Kentucky, is hereby DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart
Chief, Mass Media Bureau

¹ Shamrock was licensee of Station WTVQ-TV until January 29, 1992, at which time the license for the station was assigned to Park Broadcasting of Kentucky, Inc. ("Park"). See File No. BALCT-911118KG, granted December 18, 1991. Sloane originally directed his complaint against Park on January 19, 1993. On January 29, 1993, Park moved to dismiss Sloane's complaint on the ground that it was not the licensee of the station at the times of the alleged overcharges. In light of Sloane's failure to respond to Park's motion and his subsequent filing against the former licensee, we will dismiss Sloane's complaint against Park.

² Section 315(b)(1) provides as follows:

(b) The charges made for the use of any broadcasting station by any person who is a legally qualified candidate for any public office in connection with his campaign for nomination for election, or election, to such office shall not exceed -

(1) during the forty-five days preceding the date of a primary or primary runoff election and during the sixty days preceding the date of a general or special election in which such person is a candidate, the lowest unit charge of the station for the same class and amount of time for the same period

47 U.S.C. Section 315(b)(1). See also 47 C.F.R. Section 73.1942(a).

³ See Section 73.1943 of the Commission's Rules.